IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 739 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGVANBHAI MULJIBHAI VANKAR
Versus
STATE OF GUJARAT

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Appearance :
MR MANOJ SHRIMALI for MR GIRISH PATEL for Appellant.
MR PD BHATE, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/12/2007

ORAL JUDGMENT

1. This appeal arises out of an order dated 30th June 1997 rendered by learned Additional Sessions Judge, Nadiad, while disposing of Special Case No.2 of 1993.

2. Appellant herein was the original complainant, who had initiated

proceedings against two accused persons, namely, Piyushbhai Hasmukhbhai Patel and Mukundbhai Shantilal Thoria, discharging duties as Talati-cum-mantri and Deputy Mamlatdar respectively under the provisions of the Prevention of Corruption Act, 1988. While original accused no.2, Mukund Shantilal Thoria died during the pendency of the trial, the case proceeded against accused no.1, Piyush Hasmukhbhai Patel. For want of sufficient evidence, he was acquitted by learned Additional Sessions Judge by his judgment dated 16th June 1997. Learned Judge, however, felt that the present appellant-original complainant as well as one Shri Ashok Parmar, who was a prosecution witness, had given false evidence during the course of trial. Learned Judge, therefore, after issuing a notice calling upon the present appellant as well as said Shri Ashok Parmar why action under Section 344 of the Criminal Procedure Code not be initiated against them, and after considering the replies thereto, passed the impugned order. Learned Judge held that the appellant had given false evidence during the trial. He was, therefore, sentenced to suffer simple imprisonment for a term of three months and was also directed to pay fine of Rs.500/-.

3. It may be noted that Shri Ashok Parmar was also similarly sentenced. Therefore, he filed Appeal before this Court being Criminal Appeal No.656 of 1997, which came to be decided in his favour by judgment dated 4-8-1997.

4. Insofar as present appellant is concerned, however, one may notice that in reply to the show cause notice issued by learned Additional Sessions Judge, the appellant did not put up much of a defence. In his reply Exh.43 he stated that the incident was an old one and he was giving deposition after six and a half year of gap. He might have, therefore, committed certain errors in giving his evidence, which

mistakes he admits. He, however, stated that he had not committed such errors knowingly and there was no mala fide intention on his part. He further stated that he comes from rural area. He is not familiar with the intricacies of law. He may, therefore, be pardoned.

5. Apparently, the appellant, though had initiated the proceedings on the premise that accused no.2 had demanded bribe of Rs.800/- for certifying certain entries in the revenue records regarding his agricultural land and had also involved accused no.1 as being part of the conspiracy of collecting said bribe, in his testimony before the Court he sought to give clean chit to accused no.1. At the instance of learned Public Prosecutor he was declared hostile and cross-examined by the State.

6. From his reply at Exh.43 to the show cause notice, it can be seen that he had virtually admitted the charge. He had not rendered any explanation for changing his stand before the Court and giving a clean chit to accused no.1, though he himself was a complainant and initiated proceedings under the Prevention of Corruption Act against both the accused.

7. Under Section 344 of the Criminal Procedure Code, if the trial Court is of the opinion that any witness appearing in the proceedings had knowingly or willfully given false evidence or had fabricated false evidence with an intention that such evidence should be used in such proceedings, he may be tried summarily for giving or fabricating false evidence. The Court may take cognizance of such an offence and after giving offender a reasonable opportunity of showing cause why he should not be punished for such offence, try him summarily and sentence him to imprisonment for a term which may extend to three months or fine which may extend to Rs.500/- or with both.

8. Learned trial Judge, thus, had summary powers to proceed against the appellant if he was of the opinion that during the course of trial he had given false evidence.

9. Having come to a tentative conclusion about the evidence given by the appellant being false, the learned Additional Sessions Judge issued a show cause notice calling upon the appellant why he could not be proceeded against under Section 344 of the Criminal Procedure Code. In reply thereto, as noted earlier, the appellant virtually admitted the charge and only explanation rendered was that he was not aware about the legal intricacies and that there was a gap of about six and a half years between the incident and recording of evidence. He, therefore, pleaded that the error in his statement should be pardoned.

10. Under the circumstances, the conclusion of the learned Additional Sessions Judge that the appellant was required to be proceeded under Section 344 of the Criminal Procedure Code cannot be found fault with. If the appellant had denied the charge, there would be a question of his evidence being false or irreconcilable with his earlier statement on oath. In the present case that is not the situation. Under the circumstances, I find no illegality in the conclusion of the learned Judge that appellant was required to be dealt with under Section 344 of the Criminal Procedure Code and that he had to be sentenced for giving false evidence.

11. Learned Additional Sessions Judge, however, imposed maximum available punishment of imprisonment for three months and fine of Rs.500/-. Appellant is not a habitual criminal. He was a poor farmer and apparently totally illiterate. He also pleaded for mercy.

12. Under the circumstances, though conviction of the appellant is upheld, order for sentence of three months is set aside. Order regarding payment of fine is maintained.

13. Appeal is disposed of accordingly.

(Akil Kureshi, J.)

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